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Hearing Date: July 22, 2010 @ 10:00 am

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
DELPHI CORPORATION, <i>et al.</i> ,	:	Case No. 05-44481-RDD
	:	Jointly Administered
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DELPHI CORPORATION	:	Adv. Pro. No. 07-02563-RDD
	:	
Plaintiffs,	:	
	:	
v.	:	
PARK OHIO INDUSTRIES, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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**REPLY BRIEF IN SUPPORT OF MOTION BY PARK OHIO INDUSTRIES, INC.
SEEKING AN ORDER (I) PURSUANT TO FED. R. CIV. P. 60 AND FED. R. BANKR. P.
9024, VACATING PRIOR ORDERS ESTABLISHING PROCEDURES FOR CERTAIN
ADVERSARY PROCEEDINGS, INCLUDING THOSE COMMENCED BY THE
DEBTORS UNDER 11 U.S.C. §§ 541, 544, 545, 547, 548, OR 549, AND EXTENDING THE
TIME TO SERVE PROCESS FOR SUCH ADVERSARY PROCEEDINGS, (II)
PURSUANT TO FED. R. CIV. P. 12(b) AND FED. R. BANKR. P. 7012(b), DISMISSING
THE CAPTIONED ADVERSARY PROCEEDING WITH PREJUDICE, OR (III) IN THE
ALTERNATIVE, DISMISSING THE CAPTIONED ADVERSARY PROCEEDING
ON THE GROUND OF JUDICIAL ESTOPPEL**

Park Ohio Industries, Inc., purported defendant (“Park Ohio”) by and through its undersigned counsel, hereby files its reply brief (“Reply”) in support of the Motion by Park Ohio Industries, Inc. Seeking an Order (I) Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Vacating Prior Orders Establishing Procedures for Certain Adversary Proceedings, Including Those Commenced by the Debtors Under 11 U.S.C. §§ 541, 544, 545, 547, 548, or 549, and Extending the Time to Serve Process for Such Adversary Proceedings, (II) Pursuant to Fed. R. Civ. P. 12(b) and Fed. R. Bankr. P. 7012(b), Dismissing the Captioned Adversary Proceedings with Prejudice, or (III) in the Alternative, Dismissing the Captioned Adversary Proceeding on the Ground of Judicial Estoppel (the “Motion”) filed in the above-captioned adversary proceeding on April 22, 2010 [Adversary Proc. Docket No. 17].¹

In the Motion, Park Ohio requested the entry of an order vacating the orders governing the Adversary Proceeding, including the extension of the time to serve process, dismissal of the Adversary Proceeding with prejudice, or dismissing the Adversary Proceeding based upon judicial estoppel. In its Motion, Park Ohio demonstrated, in relevant part, that:

1. its due process rights have been violated by improperly permitting the Debtors to file the Complaint under seal without providing notice of the Preservation of Estate Claims Procedures Order to Park Ohio or notifying Park Ohio that it was a potential defendant;²
2. the Complaint fails to state a claim upon which relief may be granted because the Extension Orders were improperly entered and because good cause did not exist as a matter of law to grant the *ex parte* extension of time to serve process sought by the Debtors; moreover, the Debtors never attempted to provide notice of the Extension Orders to Park Ohio; and
3. the Complaint is barred by principles of judicial estoppels and must be dismissed because the Debtors misrepresented to the Court and the creditors that the Debtors would not retain any causes of action except those specifically identified in Exhibit 7.24 to the Plan.

¹ Except as other stated herein, all defined terms shall have the same meaning as set forth in the Motion.

² In their “Table of Legal Arguments Set Forth In Motions To Vacate/Motions To Dismiss,” the Debtors have attempted to characterize Park Ohio’s (and the other moving defendants) arguments for the Court. However, Park Ohio disagrees with the Debtors’ characterization of its argument and states that it is the Motion, and not the Debtors’ table, that accurately reflects Park Ohio’s arguments.

Therefore, Park Ohio is entitled to have the Preservation of Estate Claims Procedures Order, the Extension of Avoidance Action Service Deadline Order, and the Supplemental Postconfirmation Extension of Avoidance Action Service Deadline Order vacated as against it, or to have the Complaint dismissed with prejudice as barred by judicial estoppel.

On June 7, 2010, the Reorganized Debtors filed their Omnibus Response to Motions Seeking, Among Other Forms of Relief, Orders to Vacate Certain Procedural Orders Previously Entered by this Court and to Dismiss the Avoidance Actions Against the Moving Defendants (Bankruptcy Docket No. 20225, Adversary Proc. Docket No. 22 (the “Response”), requesting that the Court deny the Motion in its entirety.

For its Reply, Park Ohio hereby joins in and adopts the arguments set forth in the following reply briefs (the “Omnibus Replies”), filed by or on behalf of similarly situated preference defendants (the “Complaining Preference Defendants”):

- The Reply of Wagner-Smith Company to Reorganized Debtors’ Omnibus Response to Motions Seeking, Among Other Forms of Relief, Orders to Vacate Certain Procedural Orders Previously Entered by This Court and to Dismiss the Avoidance Actions Against the Moving Defendants (Bankruptcy Docket No. 20306);
- Sections I and III of the Reply of HP Enterprise Services, LLC and Affiliates in Support of Their Motion for an Order Dismissing the Complaint with Prejudice, and Vacating Certain Prior Orders Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024 (Bankruptcy Docket No. 20331);
- Sections I, II & III of the Reply and Joinder in Further Support of Motion of Johnson Controls, Johnson Controls Battery Group, Johnson Controls GMBH & Co., KG and Johnson Controls, Inc. to: (A) Vacate Certain Prior Orders of the Court; (B) Dismiss the Complaint with Prejudice; or (C) in the Alternative, to Dismiss the Claims Against Certain Defendants Named in the Complaint and to Require Plaintiffs to File a More Definite Statement (Bankruptcy Docket No. 20298); and
- Sections C, D & F of the Reply Memorandum of Law in Support of Motions of Affinia, GKN, MSX and Valeo to: (A) Vacate Certain Prior Orders of the Court; (B) Dismiss the Complaint with Prejudice; (C) and Dismiss the Claims Against Certain Defendants Named in the Complaint; and (D) Dismiss Claims Based on Assumption of Contracts; or (E) in the Alternative, to Require Plaintiffs to File a More Definite Statement (Bankruptcy Docket No. 20304).

The facts and arguments set forth in the Omnibus Replies are substantially the same, if not identical, with respect to Park Ohio, so that any relief granted for the benefit of one or more of the Complaining Preference Defendants should be granted for all and other who are similarly situated.

Dated: July 2, 2010

Respectfully submitted,

/s/ Tiiara N. A. Patton

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2010, I caused the forgoing Reply Brief in Support of Motion by Park Ohio Industries, Inc. Seeking an Order (i) Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Vacating Prior Orders Establishing Procedures for Certain Adversary Proceedings, Including Those Commenced by the Debtors Under 11 U.S.C. §§ 541, 544, 545, 547, 548, or 549, and Extending the Time to Serve Process for Such Adversary Proceeding, (ii) Pursuant to Fed. R. Civ. P. 12(b) and Fed. R. Bankr. P. 7012(b) , Dismissing the Captioned Adversary Proceeding with Prejudice, or (iii) in the Alternative, Dismissing the Captioned Adversary Proceeding on the Ground of Judicial Estoppel to be served through electronic transmission via the Court's CM/ECF system to all parties who are listed on the Court's Electronic Mail Notice List.

/s/ Tiiara N. A. Patton
Tiiara N. A. Patton (TP-8803)